IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD
(Special Original Jurisdiction)

WEDNESDAY, THE SEVENTEENTH DAY OF JUNE
TWO THOUSAND AND NINE

PRESENT
THE HON'BLE MR JUSTICE NOOTY RAMAMOHANA RAO
WRIT PETITION NO : 3995 of 2007

Between:
The Assistant Traffic Manager, APSRTC, M.G.B.S. Gowliguda, Hyderabad.

..... PETITIONER

AND

1. Smt. K.S. Lalitha Kumari W/o. A. Ramakrishna, Conductor, E.No. 99229, R/o. 321/A, IV Block, 3rd Floor, Janapriya Apartments, Brindavan Colony, Saroornagar, Hyderabad.
2. The Presiding Officer, Labour Court-I Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to pass any writ, order or direction more particularly a writ of certiorari by calling for records in ID No. 28/2002 before the Labour Court-I Hyderabad and consequently quash the award dt. 7-1-2005 directing reinstatement with continuity of service, attendant benefits and 50% back wages and pass such other order or orders as the Hon'ble Court may deem fit and proper in the circumstances of the case.

Counsel for the Petitioner:MR.K.MADHAVA REDDY

Counsel for the Respondent No.: GP FOR LABOUR

The Court made the following :

THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO

W.P.NO.3995 OF 2005

ORDER:

This writ petition has been preferred by the A.P.S.R.T.C. (henceforth referred to as 'the Corporation'), calling in question the correctness and validity of the Award passed by the Labour Court – I in I.D.No.28 of 2002, raised by the 1st respondent – workman.

The facts that led to the raising of the industrial dispute, in terms of Section 2-A (2) of the Industrial Disputes Act, 1947, (henceforth referred to as 'the Act') are these:

The petitioner was working as a booking clerk. An adverse report has been filed against her by the Traffic Inspector that she unauthorizedly absented from her duties from 04-04-2000 to 20-04-2000. Based upon the said report, the disciplinary proceedings have been drawn by issuing a charge sheet on 22-04-2000, framing the following two charges against her:

1. "For having absented for duty from 4-4-2000 to till date unauthorisedly without prior sanction of leave, caused inconvenience to traveling public

and Computer Section which constitutes mis-conduct under Reg.28 ix(a) of the A.P.S.R.T.C., Employees (Conduct) Reg.1963".

2. "For your irregular and poor attendance i.e., for the period from 25-5-99 to 21-4-2000 you are not available for duty for 167 days (CLS-15, ELS-22, R/S-6, G/S-92, A-32) out of 326 days which shows that you are unprofitable employee to the Corporation which constitutes mis-conduct under Reg.28 xxvii of A.P.S.R.T.C. Employees (Conduct) Reg.1963."

The charge sheet has been sent under registered post to the address of the 1st respondent - workman which was returned undelivered as she left the said address. The Chief Inspector of Traffic has been appointed as an Enquiry Officer and he conducted the enquiry by recording the statements of three witnesses and since no notice could be delivered on the 1st respondent - workman, the enquiry proceedings were conducted in absentia. The Enquiry Officer found the 1st respondent - workman guilty of the two charges. A show cause notice was drawn by the disciplinary authority against the workman on 06-11-2000 proposing to impose the penalty of removal from service. The said communication also could not be delivered to the 1st respondent as she left the address, which was available

with the Corporation. Ultimately, by the proceedings dated 29-12-2000, the punishment of removal from service has been imposed.

Coming to know about the imposition of the said penalty, the 1st respondent - workman has preferred an Appeal, in terms of Regulation 20 of the A.P.S.R.T.C. Employees (Conduct) Regulations, 1963, to the Divisional Manager which was rejected on 19-12-2001. Invoking the provisions under Section 2-A (2) of the Act, the industrial dispute has been raised by the workman.

Apart from examining herself, she has also filed documents and got them marked as Exs.W-1 to W-6. On behalf of the management of the Corporation, documents in Exs. M-1 to M-24, have been got marked.

The Labour Court has perused the entire material and noticed various contentions that were canvassed before it and taken all the relevant factors into consideration. Exs.W-1 to W-6 are various medical certificates issued by various hospitals, including Government Hospital, Malakpet, Osmania General Hospital, Hyderabad, M.N.J. Cancer Hospital, Red Hills, Hyderabad and Government Ayurvedic Hospital, Hyderabad. It was diagnosed that the 1st respondent - workman has been down with Blood Cancer and she has been subjected to treatment.

It can hardly be doubted that the teaching hospitals such as, Osmania General Hospital and M.N.J. Cancer

Hospital, would not subject any patient to unnecessary treatment for Cancer unless and otherwise the patient has been truly suffering from the disease. Treatment of the decease Cancer is a time consuming and prolonged affair. Therefore, the Labour Court had rightly come to the conclusion that the charge laid against the 1st respondent - workman that she was unauthorizedly absent, cannot be said to be established, particularly, when her leave applications have been accompanied by a justifiable reason for sanction of the leave applied for. If a workman is down with Cancer and was receiving treatment at a hospital like the Regional Cancer Center, Government M.N.J. Cancer Hospital, Red Hills, Hyderabad, one can hardly accuse the workman to be guilty of any misdemeanor, warranting imposition of a severe punishment. The Labour Court, therefore, had very rightly interfered with the punishment imposed by the disciplinary authority, as confirmed by the Appellate Authority, by substituting the same by denying the 1st respondent workman 50 % of the back wages, which otherwise would have been ordered to be paid for the period that she has been kept out of employment due to the impugned order of removal from service.

The learned Standing Counsel raised several contentions including the contention that the exercise of discretion in terms of the provisions contained in Section 11-A of the Act by the Labour Court has not been carried

on proper lines. But, when confronted with the material marked as Exs.W-1 to W-6, which could not be doubted at all, the learned Standing Counsel submits that proper procedure of getting the leaves sanctioned, without causing any inconvenience to the Organization, should have been followed and that the 1st respondent - workman should have taken the necessary precaution to inform the employer of her correct address including bringing to their notice the factum of her hospitalization and it is all because of her failure, the disciplinary proceedings have been initiated and carried on.

I am afraid that the contention canvassed on behalf of the learned Standing Counsel for the Corporation does not fall within the parameters of the scope for judicial review available in a writ of certiorari proceedings, for me to correct the error, if any, available on the face of the record of the Labour Court. When once an employee has been diagnosed to be down with a dreaded disease, one can hardly expect such an employee to faithfully comply with all the requirements of the conduct regulations, such as, intimating the factum of her change of residence and address and also the factum of her hospitalization for receiving treatment for a disease like that of Cancer. When the material produced in the form of certificates and the treatment received by the workman, which itself cannot be doubted at all, it follows that the 1st respondent workman has been truly suffering from a dreaded disease

and in her anxiety to combat the same, she was more concerned and was required to concentrate on receiving proper treatment rather than truly worrying about not intimating her employer about the factum of her change of residence or the factum of her hospitalization for receiving treatment at Government M.N.J. Cancer Hospital, Red Hills, Hyderabad. I cannot characterize the discretion exercised by the Labour Court in the face of the material exhibited as Exs.W-1 to W-6 as perverse warranting interference at my hands. I must say that the Labour Court has weighed the interests of the Corporation also very appropriately by denying the 1st respondent - workman 50 % of her back wages.

I, therefore, do not find any justifiable reason or ground calling for or warranting interference with the Award of the Labour Court in I.D.No.28 of 2002, raised by the 1st respondent – workman.

Accordingly, the Writ Petition is dismissed, but however, without costs.

Nooty Ramamohana Rao, J

17th June 2009
mrk

..... REGISTRAR

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